Supreme Court, U.S.
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No. 93-903

In The

Supreme Court of the United States

October Term, 1993

THE ANSCHUTZ CORPORATION,

Petitioner,

v.

AMOCO ROCMOUNT COMPANY and
UNION PACIFIC RESOURCES COMPANY,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Must a district court determine in all diversity cases the specific state in which a party corporation's principal place of business is located, even when the district court has made specific findings of fact that the party has satisfied its burden of proving that none of the possible locations of its principal place of business would destroy complete diversity?

2. Was it proper for the district court and the Tenth Circuit to base their determinations of the principal place of business of one of the parties on application of a "total activity" test when (1) every circuit has approved similar tests allowing consideration of the totality of factors giving rise to such a determination, and (2) strict application of a "nerve center" test to an uncomplicated corporate structure such as the one in this case would be inappropriate?

RULE 29.1 LISTING

Respondents are Amoco Rocmount Company and Union Pacific Resources Company f/k/a Champlin Petroleum Company. Amoco Rocmount Company's parent is Amoco Production Company, whose parent is Amoco Corporation. Amoco Rocmount Company has no subsidiaries.

Union Pacific Resources Company's parent is Resources Holding, Inc., whose parent is Union Pacific Corporation. Union Pacific Resources Company has no subsidiaries not wholly owned by it.

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To The United States Court Of Appeals
For The Tenth Circuit**

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

STATEMENT OF THE CASE

The Petition asserts that Amoco Rocmount Company's ("Rocmount") principal place of business for purposes of diversity jurisdiction under 28 U.S.C. § 1332 is in Colorado. If it is not, then complete diversity existed, and the Writ should be denied.

Rocmount is a Delaware corporation created for the sole purpose of holding title to a working interest in a huge oil and gas reservoir known as the Anschutz Ranch East Unit ("AREU"), which interest was conveyed to it by

its parent, Amoco Production Company ("Production") on October 27, 1982. Joint Trial Ex. 82. The AREU is located entirely in the states of Utah and Wyoming, and straddles the border between those states. App. at 31a.

Rocmount carries on no operations whatsoever, maintains no employees, and has no office other than its executive office in Chicago, Illinois.[1] Plaintiff's Trial Ex. 22 ("Gates Depo.") at 6, 34, 50. Pursuant to the Management Agreement between Rocmount and Production, Production handles all operations involved in Rocmount's ownership interest in the AREU. Joint Trial Ex. 99. Production is based in Chicago, Illinois and there is no dispute in this case that Production's principal place of business is in Illinois. App. at 46a.[2] Production maintains several regional offices, including one in Denver, Colorado. Most of the operations of the AREU were conducted, however, at Production's Evanston, Wyoming district office. Gates Depo. at 6.

The underlying case was filed in June, 1986, and Respondents recovered damages in excess of $29 million for Anschutz's wrongful withholding of their funds. App. at 3a. After discovery and trial, the district court made specific findings of fact and conclusions of law that

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[1] The undisputed evidence before the district court was that Rocmount maintains no offices except its executive office in Chicago, but that *Production* maintains offices in Chicago and Denver. Gates Depo. at 6, 34, 50. The district court stated erroneously in its order that *Rocmount* maintains those offices. Also, the Petition's first sentence contains an intentional misstatement. Rocmount is identified as "of Denver, Colorado," which it most certainly is not.

[2] "App." references are to Petitioner's Appendix.

Rocmount had met its burden of proving diversity and had established that its principal place of business is in either Utah or Wyoming, the two states encompassing Rocmount's only asset, the interest in the AREU,[3] or at Production's principal place of business in Illinois. App. at 46a.

The Tenth Circuit carefully analyzed the state of the law in the other circuits and noted that the "nerve center" and "corporate activities" tests are really "two sides of the same coin," and that the preferred practice is to utilize a flexible approach, able to consider the full panoply of factors embodying both tests, and analyzing the "totality of the circumstances." App. at 8a. Such an approach also allows differing analyses depending on the type of corporation involved. Thus, the "total activity" test *encompasses* the "nerve center" test, and calls for its use in appropriate circumstances. App. at 8a n.2. Applying this "total activity" test, the Tenth Circuit had "little difficulty" agreeing with the district court that whether Rocmount's principal place of business is in Wyoming or Utah, it cannot be in Colorado. App. at 10a.

No issue raised in the Petition is worthy of review by this Court because (1) Rocmount met its burden of proving diversity of citizenship, and was not required to establish in which diverse state its principal place of business is located, (2) the circuits are not in conflict over

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[3] The Petitioner makes the misstatement that "there is no indication that Rocmount's passive reserves are either predominantly in Wyoming or predominantly in Utah." Petition at 22 n.7. In fact, the district court found, based on undisputed evidence, that the AREU's reserves are located predominantly in Utah. App. at 31a.

the appropriate method of determining a corporation's principal place of business, particularly where, as here, the corporate structure is a simple one, and (3) this case is a poor vehicle for this Court to create new law restricting the district courts' flexibility in making principal place of business determinations.

REASONS FOR DENYING THE WRIT

1. Rocmount Satisfied Its Burden Of Proving Diversity Of Citizenship.

Anschutz contends that the courts below were required to identify the specific location of Rocmount's principal place of business, even though Rocmount established that each of the three possible locations affords complete diversity.

As both the district court and the Tenth Circuit held, it is not necessary to identify the exact location of a corporation's principal place of business if that corporation establishes, and the district court finds, that diverse citizenship exists.

> Finally, a party need not always prove the exact location of a corporation's principal place of business; all that is necessary is that he establish that diverse citizenship does or does not exist. If it can be shown, for example, that the principal place of business is one of two states, and the opposing party is not a citizen of either of them, jurisdiction will be upheld.

13B Charles A. Wright *et al.*, *Federal Practice & Procedure* § 3625 at 642 (2d ed. 1984).

Contrary to Anschutz's assertion, Petition at 21, both lower courts recognized that Rocmount bore the burden of establishing its diverse citizenship, and held that Rocmount had satisfied that burden. App. at 7a, 10a; App. at 45a, 48a. Rocmount's burden was to demonstrate the facts upon which diversity jurisdiction could exist. *University of Rhode Island v. A.W. Chesterton Co.*, 2 F.3d 1200, 1213 (1st Cir. 1993). Upon such a *prima facie* showing, Anschutz carried the burden of rebutting the showing. *Id.*

Rocmount established, and the district court found, that its principal place of business is in Wyoming or Utah, where its only asset is located. App. at 46a. A "nerve center" analysis would find Illinois to be Rocmount's principal place of business, while a "center of activity" or "total activity" test would find Wyoming or Utah to be the principal place of business. Under no test would Colorado be deemed to be Rocmount's principal place of business.[4] *Id.*

Anschutz argues that a district court must, in all diversity cases, determine the precise location of a corporation's principal place of business, and cannot make

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[4] Anschutz makes the unremarkable observation that since different tests could result in different conclusions, a rigid single-factor test should be imposed. Petition at 16. First, in this case, *any* test results in diversity. Second, Anschutz's observation merely underscores the importance of having flexibility to apply the factors most appropriate to the specific corporation at issue.

alternative findings of fact.[5] First, Anschutz cites no authority for placing this burden on courts and litigants, even where no genuine issue concerning diversity exists. For example, in the present case, Anschutz would require further analysis from the district court to select a principal place of business from among several states, each of which is diverse from Anschutz's citizenship. No good reason is advanced for adding this burden where nothing is gained from the time, money and effort expended. Federal court jurisdiction is present in any event, so further discovery, evidence and analysis is wasteful. Since the federal courts are courts of limited jurisdiction, and since a party seeking to invoke that jurisdiction always bears the burden of proving the presence of such jurisdiction, Anschutz would presumably require findings of fact and conclusions of law establishing each party's principal place of business in every diversity case, even when diversity jurisdiction is not disputed. There is no valid basis for imposing such a wasteful burden on courts and litigants.[6]

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[5] Anschutz confuses the issue of whether a district court must precisely locate a corporation's principal place of business with the issue of whether a corporation can have multiple principal places of business. Petition at 21-23. Rocmount does not contend that at any one point in time a corporation can have more than one principal place of business; it only contends that if each of the possible locations would preserve diversity, no finding of the precise location of the principal place of business is required.

[6] This important practical consideration contrasts sharply with Anschutz's curious suggestion that for practical reasons a district court must identify a corporation's principal place of business to preclude large corporations from presenting a

Second, district courts routinely end the inquiry into diversity at the point where further analysis would yield no possible different result. *See, e.g., Casio, Inc. v. S.M. & R. Co., Inc.*, 755 F.2d 528, 530 (7th Cir. 1985); *Quaker State Dyeing & Finish Co. v. ITT Terryphone Corp.*, 461 F.2d 1140, 1143 (3rd Cir. 1972); *Celanese Corp. of Am. v. Vandalia Warehouse Corp.*, 424 F.2d 1176, 1178 (7th Cir. 1970); *Roman Ramos v. H.B. Fuller Co.*, 729 F. Supp. 221, 223 (D. P.R. 1990); *R.W. Int'l, Inc. v. Borden Interamerica, Inc.*, 673 F. Supp. 654, 658 (D. P.R. 1987); *Jerro v. Home Lines, Inc.*, 377 F. Supp. 670, 672 (S.D.N.Y. 1974); *Nassau Sports v. Peters*, 352 F. Supp. 867, 868 (E.D.N.Y. 1972); *Leve v. General Motors Corp.*, 246 F. Supp. 761, 764 (S.D.N.Y. 1965); *Textron Elecs., Inc. v. Unholtz-Dickie Corp.*, 193 F. Supp. 456, 460 (D. Conn. 1961).

Third, even if failure to identify the precise location of Rocmount's principal place of business was error, it was harmless error in this case, since each possible location would maintain diversity of citizenship.[7] 28 U.S.C. § 2111. *See McDonough Power Equip., Inc. v. Greenwood*, 464

"moving target." Petition at 21-23. This argument ignores the fact that so long as every reasonable candidate for selection as that corporation's principal place of business preserves diversity, selection of one is a useless and wasteful exercise. Rocmount never wavered from its initial position that its principal place of business was either at the AREU or in Illinois. No rule prohibits such alternative theories, particularly where each alternative maintains diversity.

[7] Since such "error" did not make the difference between a finding of diversity and one of a lack of diversity, it is not "a failure to clear a jurisdictional hurdle", which can never be harmless error. *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 318 n.3 (1988).

U.S. 548, 553-54 (1984); *Securities and Exch. Comm'n v. Chenery Corp.*, 318 U.S. 80, 88 (1943).

In short, the lower courts acknowledged Rocmount's burden of proving complete diversity, and correctly held that such burden was satisfied, based on the undisputed factual findings made by the district court.

2. Rocmount's Citizenship Was Correctly Held To Be Diverse From Anschutz's.

Anschutz contends that the lower courts erred in failing to apply the "nerve center" test in determining Rocmount's principal place of business, and asks this Court to impose the "nerve center" test in all circumstances where diversity of citizenship is at issue. It is well established, and both the district court and the Tenth Circuit held, that "nerve center" analysis is merely one component of principal place of business analysis, and is applicable only in situations where the corporation's operations are far-flung and varied. App. at 8a n.2; App. at 45a-46a. *See J.A. Olson Co. v. City of Winona*, 818 F.2d 401 (5th Cir. 1987); *United Nuclear Corp. v. Moki Oil & Rare Metals Co.*, 364 F.2d 568 (10th Cir. 1966), *cert. denied*, 385 U.S. 960 (1966); *Scot Typewriter Co. v. Underwood Corp.*, 170 F. Supp. 862 (S.D.N.Y. 1959). Even the Bankruptcy Act hearing testimony and the cases relied upon in the Petition only apply "nerve center" analysis to corporations with "widespread" activities. Petition at 10, 12.

Here, the district court's unchallenged factual findings (which cannot be set aside unless clearly erroneous, *Media Duplication Servs. v. HDG Software*, 928 F.2d 1228 (1st Cir. 1991)), and the legal basis for not employing the

"nerve center" test, were that Rocmount's corporate structure is simple. All Rocmount's assets are in a single location (the AREU) and the corporate system is not geographically widespread. App. at 45a-46a. The district court held that:

> The citizenship of [Rocmount] is not nearly so complex an issue as was the citizenship of United Nuclear. We see no need to apply the "nerve center" test here, where the complex and geographically widespread corporate system that existed in *Moki* is not present. The "center of activity" test developed by the Third Circuit in *Kelly v. United States Steel Corp.*, 284 F.2d 850 (3rd Cir. 1960), and adopted in this circuit in *Fellers v. Atchison, Topeka & Santa Fe Ry. Co.*, 330 F. Supp. 1334 (D. Kan. 1971), is more appropriate to the circumstances of this case. The "center of activity" test determines a corporation's principal place of business by looking at the state "where the bulk of the assets and where management of day-to-day affairs are located. . . ." *Id.* at 1338. The two tests are reconcilable, and the choice between the two depends on the character of the corporation. Where, as here, all of the company's assets are in a single location, the "center of activity" test more logically applies.

App. at 45a-46a (citations and footnote omitted).

The Tenth Circuit agreed that under Rocmount's circumstances, the "total activity" test would not focus exclusively on "nerve center" analysis, but more properly would look to the location of Rocmount's assets and production activities, *all* of which occur at the AREU, not in Colorado. App. at 7a-9a.

Rocmount's principal place of business under a "nerve center" analysis would be Illinois, where the undisputed evidence established that its corporate decisions are made. Tr. Vol. II at 33; Tr. Vol. VI at 66. Under any other test, Rocmount's principal place of business is at the AREU, which straddles Utah and Wyoming (the bulk of assets occurring in Utah, App. at 31a). Anschutz simply ignores what was obvious to both the district court and the Tenth Circuit – that Rocmount (as opposed to Production) has no contact whatsoever with Colorado excepting only its Management Agreement with Production. The district court held:

> Plaintiff in this suit is neither Amoco Corporation nor Amoco Production; it is Amoco Rocmount, whose sole function is to manage the AREU, located in Wyoming and Utah. Its corporate structure is simple, and its presence is geographically limited. Since [Rocmount's] assets and production activities are located entirely in Wyoming and Utah, its principal place of business is also in Wyoming or Utah. We need not determine in which of these two states [Rocmount's] principal place of business is; it is sufficient that we have decided it is not in Colorado.

App. at 46a. The Tenth Circuit concurred, stating concisely that:

> We have little difficulty upholding the district court's conclusion under the total activity test. The only connection between [Rocmount] and Colorado is the management contract with Amoco Production. [Rocmount] has no employees in Colorado. [Rocmount's] sole function is to operate the AREU as unit operator and

> to manage Amoco Production's interest in the unit. Therefore, the locus of [Rocmount's] total activities is the AREU which spans two states, Wyoming and Utah. Anschutz is a Kansas corporation with its principal place of business in Colorado. There is complete diversity between the parties, and jurisdiction was proper in the district court.

App. at 10a.

There can be no dispute that under a "total activity" analysis complete diversity existed, and federal court jurisdiction was present. The following is a list of undisputed facts on which the district court based its findings. These facts[8] establish that Rocmount's principal place of business is either Illinois, Utah or Wyoming, but in no event Colorado:

- Rocmount has no employees in Colorado. Gates Depo. at 24; App. at 10a.

- Rocmount has no offices in Colorado, Gates Depo. at 34; its executive offices are located in Illinois. Gates Depo. at 6, 50.

- Rocmount owns no property, real or personal, in Colorado; its only asset is located in Wyoming and Utah. Gates Depo. at 31; Tr. Vol. II at 66.

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[8] Many of the factual assertions made in Petitioner's Statement of the Case are either irrelevant or misleading. For example, the representation that thirteen of Rocmount's officers resided in Colorado was never true at any given point in time. In fact, at all times the majority of both Rocmount's officers and its directors resided in Illinois. Gates Depo. at Exhibits 5-7.

- Corporate decisions are made in Illinois. Tr. Vol. II at 33; Tr. Vol. VI at 66.

- Rocmount's corporate records are maintained in Illinois. Gates Depo. at 27.

- The majority of Rocmount's officers and directors were located in Illinois at all relevant times. Gates Depo. at 6, 24; Tr. Vol. II at 33; Gates Depo. at Exhibit 1.

- Rocmount files its federal income tax return in Illinois[9]; the returns are prepared and signed by individuals working in Illinois. Gates Depo. at 13, 14, 21.

- Rocmount's annual corporation report to the State of Wyoming, its franchise or income tax return for the State of Utah and its annual franchise tax report filed in Delaware, all list Rocmount's principal place of business as Chicago. Gates Depo. at Exhibit 1.

- Rocmount maintains only one bank account, in New York City. Gates Depo. at 33.

The determination of a corporation's principal place of business ultimately is a factual one. *J.A. Olson Co. v. City of Winona*, 818 F.2d 401, 406 (5th Cir. 1987); 1 James W. Moore *et al.*, *Moore's Federal Practice* ¶ 0.77[3.-1] at 717.62, 717.64 (2d ed. 1993). Indeed, this Court recently explained (in the context of the Internal Revenue Code)

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[9] This is a particularly significant fact since a corporation is required to file its federal tax return in the Internal Revenue District in which its principal place of business is located. 26 U.S.C. § 6091(b)(2)(A)(i).

that a principal place of business determination is inherently factual, and not appropriate for a single, objective test:

> In determining whether the proper test for deciding whether a home office is the principal place of business, we cannot develop an objective formula that yields a clear answer. The inquiry is more subtle, with the ultimate determination of the principal place of business being dependent upon the particular facts of each case.

Commissioner of Internal Revenue v. Soliman, 113 S.Ct. 701, 706 (1993). This Court cannot possibly find that the factual findings made by the district court and affirmed by the Tenth Circuit were clearly erroneous.

The Petition reflects Anschutz's confusion between Rocmount and Production. In fact, the Petition states that a "nerve center" analysis of Rocmount would properly focus on ascertaining *Production's* principal place of business. Petition at 21. The district court found, and there is no dispute, that if Production's citizenship or business were at issue, Illinois is its principal place of business, even under the "nerve center" test. App. at 46a n.2. Recognizing that Anschutz was ignoring the management contract between Rocmount and Production, and was imputing business activity to Rocmount from operations conducted by Production in its Denver regional office, the district court observed that:

> Defendant does not argue that Amoco Rocmount is in fact the alter ego of Amoco Production; if it did, there would still be diversity

> because the "nerve center" of Amoco Production is indisputably in Illinois. The "nerve center" test would be appropriate if the Court were attempting to determine the principal place of business of Amoco Production, which has a complex corporate structure and various geographically distinct offices.

App. at 46a n.2.

It is well established that in determining Rocmount's principal place of business, courts may look only to Rocmounts' business activities, not to Production's. *Taber Partners I v. Merit Builders, Inc.*, 987 F.2d 57, 61 (1st Cir. 1993), *cert. denied*, 114 S. Ct. 82 (1993); *Danjaq, S.A. v. Pathe Communications Corp.*, 979 F.2d 772, 775 (9th Cir. 1992); *Topp v. Compair, Inc.*, 814 F.2d 830, 834-35 (1st Cir. 1987); *Armstrong v. Goldblatt Tool Co.*, 609 F. Supp. 736, 738 (D. Kan. 1985); 1 James W. Moore *et al.*, *Moore's Federal Practice* ¶ 0.77[1.-2] (2d ed. 1993).

3. There Is No Conflict Among The Circuits.[10]

This Court has never felt the need to make a pronouncement as to the method for determining a corporation's principal place of business; yet, the circuits evolved

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[10] The Petition makes the misstatement that the Tenth Circuit expressly acknowledged a split among the circuits. Petition at 5, 6. To the contrary, the Tenth Circuit carefully analyzed the court opinions and scholarly writings, acknowledging that different nomenclature is sometimes used, and recognized that the tests are reconcilable. The Tenth Circuit cited with approval the conclusion reached by Wright *et al.*, that the different tests are simply applications of the general rule that the choice of a principal place of business is governed by the "bulk of corporate activity." App. at 8a.

naturally to a flexible approach encompassing all relevant factors, and selecting a corporation's principal place of business based on the totality of the circumstances. The circuits no longer adhere blindly to a rigid test without regard to the nature of the subject corporation. Only the Seventh Circuit still claims to adhere to one standard in all cases, the "nerve center" test, and even that Circuit's decisions belie that posture.

The complexity of the modern business world, and the "myriad incarnations of corporate form and operations," require affording flexibility to the district courts in analyzing a corporation's principal place of business. App. at 9a. Thus, every circuit, in recognition that determining a corporation's principal place of business involves a fact and circumstance analysis, uses some form of flexible test capable of considering the totality of the circumstances relevant to that determination. However the various circuits denote such a test, each circuit maintains the flexibility to apply differing analyses, depending on the structure of the subject corporation, and seeks on a case-by-case basis to identify a corporation's principal place of business by considering *all* its activities.

The following cases signify by circuit the universal use, whether explicit or implicit, of a test designed to locate the bulk of a corporation's activities. *Taber Partners I v. Merit Builders, Inc.*, 987 F.2d 57, 61 (1st Cir. 1993); *R.G. Barry v. Mushroom Makers, Inc.*, 612 F.2d 651, 655 (2d Cir. 1979); *Egan v. American Airlines, Inc.*, 324 F.2d 565, 566 (2d Cir. 1963); *Kelly v. United States Steel Corp.*, 284 F.2d 850, 854 (3rd Cir. 1960); *Mullins v. Beatrice Pocahontas Co.*, 374 F. Supp. 282, 285-86 (W.D. Va., 1974), *aff'd without opinion*, 530 F.2d 969 (4th Cir. 1975); *Harris v. Black Clawson Co.*,

961 F.2d 547, 549 (5th Cir. 1992); *Grinter v. Petroleum Operation Support Serv., Inc.*, 846 F.2d 1006, 1008 (5th Cir. 1988), *cert. denied*, 488 U.S. 969 (1988); *J.A. Olson*, 818 F.2d at 409-10; *Gafford v. General Elec. Co.*, 997 F.2d 150, 163 (6th Cir. 1993); *Kanzelberger v. Kanzelberger*, 782 F.2d 774, 777-78 (7th Cir. 1986); *Mahoney v. Northwestern Bell Tel. Co.*, 258 F. Supp. 500, 502 (D. Neb. 1966), *aff'd*, 377 F.2d 549 (8th Cir. 1967); *Industrial Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092-94 (9th Cir. 1990); *United Nuclear*, 364 F.2d at 570; *Vareka Invs., N.V. v. American Inv. Properties, Inc.*, 724 F.2d 907, 909-10 (11th Cir. 1984), *cert. denied*, 469 U.S. 826 (1984).

Through an evolutionary process commencing in 1959 with *Scot Typewriter*, the circuits have crafted different "tests" to apply to principal place of business analysis, depending upon the corporate structure involved. Thus, all circuits agree that where a corporation "is engaged in far-flung and varied activities which are carried on in different states, its principal place of business is the nerve center from which it radiates out to its constituent parts and from which its officers direct, control and coordinate all activities." *Scot Typewriter*, 170 F. Supp. at 865. The courts further agree that where significant administrative authority and activity occurs in one state, and lesser executive officers but principal operations occur in another, the former state is that corporation's principal place of business. *Kelly*, 284 F.2d at 854. It is also accepted now that where a corporation's headquarters are located in one state, and the corporation carries on only one activity, located in another state, it is the latter state in which the corporation's principal place of business is located. *Lurie Co. v. Loew's San Francisco*

Hotel Corp., 315 F. Supp. 405 (N.D. Cal. 1970); *Inland Rubber Corp. v. Triple A Tire Serv., Inc.*, 220 F. Supp. 490 (S.D.N.Y. 1963).

J.A. Olson provides a thorough explication of the manner in which these tests "simply stand for general rules regarding the determination of a particular corporation's principal place of business." *J.A. Olson*, 818 F.2d at 409. Courts and commentators alike recognize that the varying approaches "are therefore not mutually exclusive but rather complementary." *Id.* at 410; 13B Charles A. Wright *et al.*, *Federal Practice & Procedure* § 3625 at 634-35 (2d ed. 1984).

Lurie is a good example of the proper analysis to apply to a corporation such as Rocmount. The defendant was incorporated in Delaware and organized by the officers of its parent corporation, located in New York, for the purpose of leasing and operating a hotel in San Francisco. The hotel was the defendant's only operating asset, just like the AREU interest is Rocmount's only asset. However, the corporation's officers, who formulated the company's overall operating policies, were located in New York. Thus, this single-purpose corporation had its nerve center in New York, but the entirety of its assets and business operations were in California. *Lurie*, 315 F. Supp. at 407-08. The defendant in that case was, therefore, virtually identically situated to Rocmount, which was formed and is governed in Illinois, but which maintains its only asset and operations at the AREU, in Wyoming and Utah.

The court in *Lurie* rejected strict application of the "nerve center" test, because "nerve center" analysis is

only properly applied to a corporation engaging in far-flung and varied activities that are carried on in different states. *Id.* at 416. Instead, that court balanced the totality of the relevant factors, and determined California to be the defendant's principal place of business. In so doing, the court noted that the various tests were merely "articulations of the same concept." *Id.* at 415.

In short, the various tests are nothing more than:

> [P]articular applications of the general rule that the bulk of corporate activity, as evidenced by the location of daily operating and management activities, governs the choice of a principal place of business.

13B Charles A. Wright *et al., Federal Practice & Procedure* § 3625 at 625 (2d ed. 1984).

Only the Seventh Circuit even pays lip service to a strict adherence to a "nerve center" test. A review of recent Seventh Circuit opinions, however, reveals that even that Circuit examines all of the activities of a corporation in determining its principal place of business.

Illustrative of the Seventh Circuit's true methodology is *Kanzelberger*, a case relied upon by Anschutz in arguing that the Seventh Circuit strictly applies the "nerve center" test. In *Kanzelberger*, the subject corporation was run "in rather a dictatorial fashion" by an Illinois citizen in the corporation's Illinois office, but the corporation's single plant and all employees and other officers were located in Wisconsin. *Kanzelberger*, 782 F.2d at 777. Had the Seventh Circuit rigidly applied the "nerve center" test, the clear outcome would have been a finding that

the corporation's principal place of business was in Illinois. Instead, the Seventh Circuit examined all relevant activities of the corporation in determining the location of its principal place of business, including the location of the corporation's plant, employees and officers. *Id.*

After considering all the activities of the corporation, the Seventh Circuit determined that its principal place of business was in Wisconsin, not in the state in which the corporation's "brain" resided. *Id.* at 778. As the Fifth Circuit noted in analyzing the *Kanzelberger* opinion:

> Notwithstanding the fact that the Seventh Circuit tips its hat to the "nerve center" test, *Kanzelberger* illustrates that, when applied by that court, "nerve center" is only another term for "principal place of business," which is determined after examining all of the facts in a given case.

J.A. Olson, 818 F.2d at 408.

Another case arising within the Seventh Circuit, after *Kanzelberger*, further illustrates the point. In *Fathers of the Order v. National Ben Franklin Ins. Co.*, 697 F. Supp. 971 (N.D. Ill. 1988), the plaintiff was a California corporation with its facility located in Illinois. The Illinois facility rendered high level policy decisions, while the California operations maintained the assets, earned the income, and made the expenditures. Expressly relying on *Kanzelberger*, that court determined California to be the principal place of business, noting that *Kanzelberger* embodies the Seventh Circuit's edict that:

> The "nerve center" of the corporation is its principal place of business, as evidenced by the

> presence of a corporate facility, officers and employees, and maintenance of corporate records.

Id. at 972 (citing *Kanzelberger*, 782 F.2d at 777). Thus, the Seventh Circuit denotes its test as a "nerve center" test, but in identifying a corporation's "nerve center", even the Seventh Circuit employs a totality of the circumstances analysis. *J.A. Olson*, 818 F.2d at 408.

Only Anschutz seems unable to recognize that this flexible totality of the circumstances approach, despite its various labels, is applied universally with little dissent or confusion, and is capable of accommodating the corporate complexities emanating from today's business environment.

4. This Case Represents A Poor Vehicle For Creating New Law Restricting The District Courts' Flexibility In Making Principal Place Of Business Determinations.

Even if this Court were otherwise inclined to establish new law creating a single, inflexible test, it should not use this case as the opportunity to do so for at least three reasons. First, this Court has previously denied certiorari in numerous prior cases involving principal place of business determinations, including some of the cases relied upon in Anschutz's Petition. *Taber Partners I v. Merit Builders, Inc.*, 987 F.2d 57 (1st Cir. 1993), *cert. denied*, 114 S. Ct. 82 (1993); *U.S.I. Properties Corp. v. M.D. Constr. Co.*, 860 F.2d 1 (1st Cir. 1988), *cert. denied*, 490 U.S. 1065 (1989); *Grinter v. Petroleum Operation Support Serv., Inc.*, 846 F.2d 1006 (5th Cir. 1988), *cert. denied*, 488 U.S. 969

(1988); *Vareka Invs., N.V. v. American Inv. Properties, Inc.*, 724 F.2d 907 (11th Cir. 1984), *cert. denied*, 469 U.S. 826 (1984); *Bialac v. Harsh Bldg. Co.*, 463 F.2d 1185 (9th Cir. 1972), *cert. denied*, 409 U.S. 1060 (1972); *United Nuclear Corp. v. Moki Oil & Rare Metals Co.*, 364 F.2d 568 (10th Cir. 1966), *cert. denied*, 385 U.S. 960 (1966). Nothing has transpired in the meantime to warrant Supreme Court review. To the contrary, the circuits have clearly evolved to a flexible approach encompassing consideration of the totality of the circumstances, and away from rigid adherence to a single-issue test.

Second, since only the Seventh Circuit even pays lip service to a single-issue test, a case decided in that Circuit, involving strict application of the "nerve center" test, and where use of a "total activity" analysis would yield a different result and would actually reverse a finding of federal court jurisdiction, would be a far better vehicle for a Supreme Court pronouncement.

Third, and most important, no matter what test would be embraced by this Court, jurisdiction exists in this case, and there would be no effect on the outcome of this litigation. Under the undisputed facts, a "nerve center" approach is inapplicable to Rocmount because of the simplicity of its corporate structure. Further, a "nerve center" analysis, applied to Rocmount (or to Production), results in the determination that Illinois is Rocmount's principal place of business, not Colorado. App. at 46a. If this Court embraces a totality of the circumstances test of any type, Rocmount's principal place of business has been found to be in Utah or Wyoming. App. at 10a, 46a. In any event, reversal, remand or affirmance on the merits by this Court would not change the conclusion

that Rocmount's and Anschutz's citizenships are diverse, and would accomplish nothing other than to delay further Respondents' recovery.

CONCLUSION

For the reasons stated herein, the Petition for a Writ of Certiorari should be denied.

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